

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington

_____)	Administrative Complaint and
IN THE MATTER OF:)	Opportunity to Request Hearing
)	and Conference
Pt. Defiance Boathouse)	
)	Proceeding to Assess Class II Civil
)	Penalty Under Section 311 of the
)	Clean Water Act
Respondent.)	
_____)	Docket No. OPA-10-99-0210
)	

I. JURISDICTION AND STATUTORY AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has delegated it to the Director, Office of Environmental Cleanup, EPA Region 10 ("Complainant").

2. This proceeding is authorized by Section 311(b)(6)(A) and (b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(A) and

(b)(6)(B)(ii), and is conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits." 40 C.F.R. Part 22 ("Part 22").

3. Complainant proposes that the Regional Administrator assess a civil penalty against Metropolitan Park District of Tacoma, Inc., Pt. Defiance Boathouse Marina ("Respondent") for its violations of regulations issued under Section 311(j) of the Act, 33 U.S.C. § 1321(j), and provides notice of Respondent's opportunity to request a hearing on the proposed penalty assessment.

4. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain such discharges"

5. Under the authority of Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), 40 C.F.R. Part 112 establishes procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities

(as defined in 40 C.F.R. Part 110) to navigable waters of the U.S. or adjoining shorelines.

6. Under 40 C.F.R. § 110.3, discharges of oil in harmful quantities are those discharges that either (1) violate applicable water quality standards, or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. The term "navigable waters" is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

7. Under 40 C.F.R. § 112.3, the owner or operator of an onshore facility that is subject to 40 C.F.R. Part 112 must prepare and fully implement a Spill Prevention Control and Countermeasure ("SPCC") plan in accordance with 40 C.F.R. § 112.7 not later than six months after the facility began operations, or by July 10, 1973, whichever is later, and must implement that SPCC plan not later than six months after the facility began operations, or by January 10, 1974, whichever is later.

8. Under 40 C.F.R. § 112.7, the SPCC plan shall contain a discussion of the appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course.

II. GENERAL ALLEGATIONS

9. Respondent is a corporation organized under the laws of

Washington with a place of business located at or near 5912 N. Waterfront Drive, Tacoma, Washington. Respondent is a "person" within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

10. Respondent is an "owner or operator," within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2, of a facility used for gathering, storing, processing, transferring or distributing oil or oil products, located at or near 5912 N. Waterfront Drive, Tacoma, Washington ("the Pt. Defiance Boathouse facility").

11. The Pt. Defiance Boathouse facility has two above-ground storage tanks with a capacity of approximately 6,000 gallons of oil per tank or 12,000 gallons of oil.

12. The Pt. Defiance Boathouse facility is an "onshore facility", as defined in Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

13. The Pt. Defiance Boathouse facility is located approximately 50 yards from Puget Sound which is a navigable water of the U.S.

14. Due to its location, the Pt. Defiance Boathouse facility could reasonably be expected to discharge oil in harmful quantities to the navigable waters of the U.S. or adjoining shorelines, as described in 40 C.F.R. § 110.3.

15. The Pt. Defiance Boathouse facility is a non-

transportation-related facility under the definition referenced at 40 C.F.R. § 112.2 and set forth in 40 C.F.R. Part 112, Appendix A, Section II, and 36 Fed. Reg. 24080 (December 18, 1971).

16. The Pt. Defiance Boathouse facility began operations more than six months prior to the date of this Complaint.

17. Based on the above, and under Section 311(j) of the Act, 33 U.S.C. § 1321(j) and its implementing regulations, Respondent is subject to 40 C.F.R. Part 112 as owner or operator of the facility described above.

III. DESCRIPTION OF VIOLATIONS

18. On August 20, 1998, EPA representatives inspected the Pt. Defiance Boathouse facility to determine compliance with Section 311(j) of the Act and 40 C.F.R. Part 112.

19. In violation of 40 C.F.R. § 112.3(a), Respondent failed to prepare in writing and fully implement an SPCC plan for the Pt. Defiance facility in accordance with the provisions of 40 C.F.R. § 112.7.

20. In violation of 40 C.F.R. § 112.7(e)(2)(iii)(D), Respondent failed to maintain records of secondary containment drainage at the Pt. Defiance facility.

21. In violation of 40 C.F.R. § 112.7(e)(2)(vi), Respondent failed to conduct periodic integrity testing on the storage tanks at the Pt. Defiance facility.

22. In violation of 40 C.F.R. § 112.7(e)(3)(iv), Respondent

failed to pressure test the pipelines at the Pt. Defiance facility.

23. In violation of 40 C.F.R. § 112.7(e)(10)(i), (ii), and (iii), Respondent failed to properly instruct its personnel in the operation and maintenance of equipment to prevent discharges of oil and applicable pollution control laws, rules, and regulations; failed to have a designated person who is accountable for oil spill prevention and who reports to line management; and failed to conduct spill prevention briefings for their operating personnel.

IV. PROPOSED PENALTY

24. Under Section 311(b)(6)(A) and (B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(A) and (B)(ii), any owner or operator in charge of any onshore facility who fails or refuses to comply with any regulation issued under Section 311(j) of the Act, 33 U.S.C. § 1321(j), may be assessed a civil penalty.

25. Pursuant to Section(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19, Respondent is liable for civil penalties up to \$11,000 per day for each day during which the violation continues, up to a maximum of \$137,500.

26. Based on the foregoing authority and allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), Complainant proposes that the Regional Administrator issue a Final Order assessing an administrative civil penalty against Respondent in the amount of \$5,500.

27. The proposed penalty has been calculated based on the facts alleged in this complaint and the factors in Section 311(b)(8) of the Act, 33 U.S.C. 1321(b)(8), including: the seriousness of the violation; the economic benefit to the violator, if any, resulting from the violation; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require.

a. **Seriousness of the violation:** Complainant considers the failure to prepare and fully implement an SPCC plan to be a serious violation, in that it leaves the facility unprepared to deal with an oil spill or to prevent the spill from having potentially serious environmental consequences. In determining an appropriate penalty, Complainant has taken into account the above-ground storage capacity of the facility (12,000 gallons) and the potential environmental impact on Puget Sound in the event of a spill.

b. **Economic benefit:** Economic benefit is determined based on the cost savings from delayed compliance. In this case, Respondent has enjoyed the cost savings from its delay in preparing an SPCC plan and delay in retaining an engineer to review the plan.

c. **Degree of culpability:** Respondent's conduct reflects

a degree of culpability in two respects: (1) Respondent failed to fully prepare and implement an SPCC plan for the above-ground storage tank at its facility, and (2) Respondent failed to reply to a notification from EPA, sent certified mail on January 8, 1999, to Respondent, informing Respondent of its obligations under the Act and requesting that Respondent submit an SPCC plan to EPA within 7 days of receipt of the notification.

d. **Any other penalty for the same incident and history of prior violations:** Respondent has not been assessed any other penalty for this incident and Complainant is unaware of any history of prior violations of the Act.

e. **The nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge:** This penalty factor does not apply to cases alleging failure to prepare and implement an SPCC plan.

f. **Economic impact of penalty on violator:** Complainant has obtained a Dunn & Bradstreet, Inc. report of Pt. Defiance Boathouse which shows that it is a company of good standing. Complainant has no information to conclude that the Respondent is unable to pay a penalty of \$5,500.

g. **Other matters as justice may require:** Respondent may be deterred from future violations by the assessment of a penalty. Other persons will be deterred from similar violations by assessment of a penalty in the case. In particular, assessment of a

penalty for the violations involved in this action may encourage Respondent and others similarly situated to properly prepare and fully implement SPCC plans for facilities under their control and thus decrease the risk of oil spills to the environment.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

28. Respondent may, pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), request a hearing on the proposed penalty assessment. The procedures for the hearing, if one is requested, are set out in 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

29. In order to be entitled to a hearing under the Act, Respondent must file a written Answer to the Administrative Complaint which meets the requirements of 40 C.F.R. § 22.15 within thirty days after receipt of this Administrative Complaint with:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101-1128

VI. FAILURE TO FILE AN ANSWER

30. In accordance with Section 22.15 of the amendments to Part 22, the Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Administrative Complaint with regard to which Respondent has knowledge. Where Respondent has no knowledge of a particular factual allegation, and so states, the allegation shall be deemed denied.

Respondent's failure to admit, deny, or explain any material factual allegation contained in the Administrative Complaint constitutes an admission of the allegation. The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing the proposed penalty; and (4) whether a hearing is requested.

31. If Respondent fails to submit an Answer within thirty days of receipt of this Administrative Complaint and the case is not otherwise disposed of through settlement, Respondent may be found in default. For purposes of this action, default constitutes an admission of all facts alleged in the Administrative Complaint and a waiver of Respondent's right to a hearing on such factual allegations.

VII. PUBLIC NOTICE

32. If Respondent requests a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to be heard and to present evidence on the appropriateness of the penalty assessment. If the Respondent does not request a hearing, EPA will issue the Final Order Assessing Administrative Penalties. Any members of the public who commented on this proposed assessment during the thirty day period following Respondent's receipt of this document

will have an additional thirty days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to request EPA to hold a hearing thereon. EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

VIII. INFORMAL CONFERENCE

33. EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, please contact:

Ann Prezyna, Deputy Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101
(206) 553-1023

32. Please note that a request for an informal settlement conference does not extend the thirty (30) day period for filing a written Answer to this Complaint.

Dated this ____ day of _____, 1999

Mike Gearheard, Acting Director,
Office of Environmental Cleanup,
EPA, Region 10

CERTIFICATE OF SERVICE

I certify that the forgoing Administrative Complaint, IN THE MATTER OF: Pt. Defiance Boathouse, OPA-10-99-0210, was sent to the following persons, in the manner specified, on the date below:

Original and one copy hand-delivered:

Mary Shillcut, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Copy by certified mail, return receipt requested and one copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Part 22 Rules"):

Skip Larsen
Metropolitan Park District of Tacoma, Inc.
4702 S. 19th St.
Tacoma, WA 98405

Art Tachell, Assistant Manager
Point Defiance Boathouse
5912 N. Waterfront Drive
Tacoma, WA 98407

Dated: _____

U.S. EPA Region 10